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V.B., Appellant)	
)	
and)	Docket No. 18-1273
)	Issued: March 4, 2019
U.S. POSTAL SERVICE, POST OFFICE,)	
Sedona, AZ, Employer)	
)	

Case Submitted on the Record

Before:
PATRICIA H. FITZGERALD, Deputy Chief Judge
ALEC J. KOROMILAS, Alternate Judge
VALERIE D. EVANS-HARRELL, Alternate Judge

On June 14, 2018 appellant filed a timely appeal from a March 8, 2018 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

The issue is whether appellant has met her burden of proof to establish disability during the period March 5 through June 20, 2017 causally related to her accepted employment conditions.

² The Board notes that following the March 8, 2018 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On April 18, 2017 appellant, then a 58-year-old rural letter carrier, filed an occupational disease claim (Form CA-2) alleging that repetitive and cumulative work activities resulted in lumbar disc herniation and calcific tendinitis of the right shoulder. In a supplemental statement, she alleged that while in the performance of her rural carrier duties she had to lift up to 70 pounds, over 100 times a day. Appellant stopped work on February 16, 2017. On July 18, 2017 OWCP accepted the claim for calcific tendinitis of the right shoulder. It subsequently expanded acceptance of the claim on November 13, 2017 to include aggravation of lumbar degenerative disc disease with radiculopathy.

On January 23, 2018 appellant filed a claim for compensation (Form CA-7) for temporary total disability from work for the period March 5 through July 13, 2017.

In a March 3, 2017 report, Dr. Kevin O'Donnell, an orthopedic surgeon specialist, provided examination findings regarding appellant's right shoulder, noting a slight reduction in range of motion with moderate reduction in internal rotation and positive Hawkins and Neer impingement tests. He provided an assessment of right shoulder pain, worsened, right shoulder rotator cuff impingement, right shoulder subacromial bursitis, and right shoulder calcific tendinitis. In a March 3, 2017 work status note, Dr. O'Donnell provided restrictions of no repetitive reaching or lifting above head.

In a March 14, 2017 report, Dr. Marshall Meier, a physiatrist, noted that appellant had ongoing low back and right lower extremity symptoms, which has worsened since onset three years prior. He provided an assessment of lumbar radiculopathy, lumbar disc degeneration, lumbar disc displacement, lumbar spondylosis with radiculopathy, and lumbar paraspinal myositis.

In an April 4, 2017 report, Paul Knott, a certified physician assistant, provided an assessment of lumbar radiculopathy, lumbar disc degeneration, lumbar disc displacement, lumbar paraspinal myositis, and lumbar spondylosis with radiculopathy. He indicated that appellant wished to proceed with surgery. Mr. Knott opined that she was unable to work secondary to her symptoms. Specifically, appellant could not tolerate lifting packages greater than 15 pounds.³ On April 6, 2017 Dr. John F. Hall, a Board-certified orthopedic surgeon, cosigned Mr. Knott's April 4, 2017 report.

In a May 30, 2017 report, Dr. Hall provided an assessment of lumbar radiculopathy, lumbar disc degeneration, lumbar disc displacement and lumbar paraspinal/myositis. He noted that appellant has exhausted conservative therapy. Dr. Hall indicated that a posterior decompression would be the most appropriate surgery for her symptoms, which began three years ago. He opined that the changes associated with degenerative process and appellant's symptoms "could be attributable to her occupation," which required lengthy hours and tasks involving lifting weight greater than 50 pounds. Dr. Hall also opined that she was unable to work secondary to her symptoms.

³ In an April 4, 2017 duty status report (Form CA-17), Mr. Knott indicated that appellant was totally disabled and that surgery was pending. The duty status report was not cosigned by a physician.

On June 21, 2017 appellant underwent an L4-5 laminectomy with decompression, which OWCP retroactively approved. On August 1, 2017 she resigned from the employing establishment.

In a September 27, 2017 report, Dr. Michael Steingart, a Board-certified orthopedic surgeon and an OWCP second opinion physician, reviewed the statement of accepted facts, appellant's medical record, and provided examination findings. He noted that she had a history of a degenerative lumbar condition that was eventually surgically treated for spinal stenosis. Dr. Steingart opined that appellant's work, which involved heavy lifting, carrying loads, and flexion and extension on a routine basis, was the source of her back complaints. Due to the fact that a two-level laminectomy had been performed on June 21, 2017, he opined that she would be unable to revert to her previous level. Dr. Steingart indicated, however, that there was no evidence to support total disability beginning on February 16, 2017 for either appellant's back or right shoulder conditions as she would have been able to work, at least a light-duty job, up until the date of surgery on June 21, 2017. In an attached work capacity evaluation (Form OWCP-5b), he provided that appellant was unable to perform her usual job without restrictions, however, she was capable of working a light and sedentary position.

In a January 30, 2018 letter, OWCP authorized wage-loss compensation benefits for the period June 21 through July 13, 2017. However, it related that disability compensation could not be authorized for the remainder of appellant's claim as the evidence received did not contain a medical opinion supported by objective findings that the accepted conditions had worsened such that she was disabled from work from March 5 through June 20, 2017. OWCP advised appellant to submit medical evidence which contained a well-rationalized medical explanation with objective findings which supported disability for the remaining dates. It afforded her 30 days to submit the requested information. No additional evidence was received.

By decision dated March 8, 2018, OWCP denied appellant's claim for disability compensation for the period March 5 through June 20, 2017. It found that Dr. Steingart had determined that she would have been able to work at least a light-duty position until her surgical procedure on June 21, 2017. Therefore, OWCP concluded that the medical evidence of record was insufficient to support that appellant was disabled as a result of her accepted work-related medical conditions from March 5 to June 20, 2017.

LEGAL PRECEDENT

An employee seeking benefits under FECA⁴ has the burden of proof to establish the essential elements of his or her claim, including that any disability or specific condition for which compensation is claimed is causally related to the employment injury.⁵

⁴ *Supra* note 1.

⁵ *S.J.*, Docket No. 17-0828 (issued December 20, 2017); *G.T.*, Docket No. 07-1345 (issued April 11, 2008); *Kathryn Haggerty*, 45 ECAB 383 (1994); *Elaine Pendleton*, 40 ECAB 1143 (1989).

Disability means “the incapacity, because of an employment injury, to earn the wages the employee was receiving at the time of injury.”⁶ The question of whether an employee is disabled for work is an issue that must be resolved by competent medical evidence.⁷ The employee is responsible for providing sufficient medical evidence to justify payment of any compensation sought.⁸

For each period of disability claimed, the employee has the burden of proof to establish that he or she was disabled from work as a result of the accepted employment injury.⁹ The Board will not require OWCP to pay compensation for disability in the absence of medical evidence directly addressing the specific dates of disability for which compensation is claimed. To do so would essentially allow an employee to self-certify his or her disability and entitlement to compensation.¹⁰

ANALYSIS

The Board finds that this case is not in posture for decision.

Appellant’s treating physicians opined that appellant could only work with restrictions for the period March 5 through June 20, 2017. In his March 3, 2017 report, Dr. O’Donnell reported objective findings and provided assessments of right shoulder pain worsened, right shoulder rotator cuff impingement, right shoulder subacromial bursitis, and right shoulder calcific tendinitis. He provided temporary restrictions of no repetitive reaching or lifting above head.

Dr. Hall, in a report dated April 4, 2017, provided an assessment of lumbar radiculopathy, lumbar disc degeneration, lumbar disc displacement, and lumbar paraspinal/myositis. In the April 4, 2017 report, he related that appellant could not lift packages greater than 15 pounds.

Appellant was seen by Dr. Steingart, OWCP’s second opinion physician, on September 27, 2017. Dr. Steingart opined that her work duties, which required heavy lifting, carrying loads, and flexion/extension on a routine basis, were the source of her back complaints.

⁶ 20 C.F.R. § 10.5(f).

⁷ See *S.A.*, Docket No. 18-0399 (issued October 16, 2018); see also *R.C.*, 59 ECAB 546, 551 (2008).

⁸ 20 C.F.R. § 10.501(a).

⁹ *Id.* at § 10.501(a); see *T.A.*, Docket No. 18-0431 (issued November 7, 2018); see also *Amelia S. Jefferson*, 57 ECAB 183 (2005).

¹⁰ See *S.M.*, Docket No. 17-1557 (issued September 4, 2018); *William A. Archer*, 55 ECAB 674, 679 (2004); *Fereidoon Kharabi*, 52 ECAB 291, 293 (2001).

He concluded that appellant “would be able to have worked up until the date of surgery, at least a light[-]duty job.”¹¹

Proceedings under FECA are not adversarial in nature and OWCP is not a disinterested arbiter. The claimant has the burden of proof to establish entitlement to compensation. However, OWCP shares responsibility in the development of the evidence to see that justice is done.¹² Once OWCP undertakes development of the record, it must do a complete job in procuring medical evidence that will resolve the relevant issues in the case.¹³ Dr. Steingart’s statement that appellant “would be able to have worked up until the date of surgery, at least a light duty job” is unclear as to her precise capabilities within the referenced time period. Therefore, further development is necessary.

On remand OWCP shall request clarification from Dr. Steingart supported by rationale regarding her precise capabilities during the period March 5 through June 20, 2017. After such further development as deemed necessary, it shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

¹¹ The Board notes that there is no evidence that the employing establishment offered appellant a light-duty assignment during this period. 20 C.F.R. §10.500(a) provides that, in an accepted claim, an employee is not entitled to compensation for any wage loss claimed on a Form CA-7 to the extent that evidence contemporaneous with the period claimed on a Form CA-7 establishes that an employee had medical work restrictions in place, that light duty within those work restrictions was available, and that the employee was previously notified in writing that such duty was available. Here, OWCP did not accept appellant’s occupational disease claim until July 18, 2017, which was after the period of disability claimed.

¹² See *R.C.*, Docket No. 15-0581 (issued June 8, 2016).

¹³ *Richard F. Williams*, 55 ECAB 343, 346 (2004).

ORDER

IT IS HEREBY ORDERED THAT the March 8, 2018 decision of the Office of Workers' Compensation Programs is set aside and the case is remanded for further proceedings consistent with this opinion.

Issued: March 4, 2019
Washington, DC

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board